

1 CHRISTOPHER CHIOU
2 Acting United States Attorney
3 District of Nevada
4 Nevada Bar Number 14853
5 ALLISON REESE
6 Nevada Bar Number 13977
7 Assistant United States Attorney
8 501 Las Vegas Blvd. South, Suite 1100
9 Las Vegas, Nevada 89101
10 Phone: (702) 388-6336
11 Email: allison.reese@usdoj.gov
12 *Attorneys for the United States of America*

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 vs.

13 IVAN TOVAR-RODRIGUEZ,

14 Defendant.

Case No.: 2:21-cr-00108-APG-NJK

**Revised Order to Produce Exhibits for
Reweighting and Retesting by Defense
Granting the Parties' Revised Motion**

(Docket No. 35)

15 UPON THE DEFENDANT'S MOTION for an order that requires the Government to produce, for
16 reweighing and qualitative (identification) and quantitative (purity) retesting by a defense expert, the
17 controlled substance exhibits the Government intends to introduce in its case-in-chief,

18 AND UPON THIS COURT'S CONSIDERATION of the arguments and pleadings filed,

19 IT IS HEREBY ORDERED AND DECREED, in accordance with Fed. R. Crim. P. 16(a)(1)(E), that
20 the Government shall deliver DEA LIMS Nos. 2020-SFL8-05919; 2020-SFL8-06476; and 2020-SFL8-06986,
21 Exhibit Numbers 28, 29, and 32, to the defense expert to weigh those exhibits in their entirety and extract a
22 sample for re-testing as outlined below; and

23 IT IS FURTHER ORDERED that the Government shall deliver, in a manner it deems consistent with
24 the type and quantity of controlled substance at issue, and considering the expert's proximity to the

1 originating Drug Enforcement Administration (DEA) laboratory, those exhibits identified above to the
2 defense expert. The defense expert has been specifically identified as **Minh Tran** at the laboratory that has
3 been specifically identified as **Drug Detection Laboratories**, which is physically located at **9700 Business**
4 **Park Drive, Suite 407, Sacramento, California 95827** and with a mailing address of **9700 Business Park**
5 **Drive, Suite 407, Sacramento, California 95827**. The defense expert shall possess and present in advance,
6 as a prerequisite to the delivery of the exhibits, a current and valid DEA registration RD0500707 sufficient to
7 perform the analyses of the schedule of controlled substance at issue, in accord and in full compliance with
8 the applicable DEA registration procedures, found at 21 C.F.R. § 1301.11 *et seq.*; and

9 IT IS FURTHER ORDERED that the defense expert shall conduct the weighing and retesting ordered
10 herein, and shall provide the Government with a Declaration Under Penalty of Perjury pursuant to 28 U.S.C.
11 § 1746 stating the quantity of each exhibit consumed during analysis (if any) as well as the weight of each
12 exhibit both received from and returned to the Government. The defense expert shall report quantitative
13 results as the hydrochloride salt, in addition to any other manner to which they are accustomed. The
14 Declaration shall be delivered to the Government immediately upon completion of the analyses ordered
herein; and

15 IT IS FURTHER ORDERED that, in accordance with Fed. R. Crim. P. 16(b)(1)(B), the defendant
16 shall provide the Government with a copy of the results or reports of the analyses under this Order; and

17 IT IS FURTHER ORDERED that:

- 18 (1) The defense shall coordinate with the Government a convenient date and time for the
retesting and reweighing ordered herein, which date shall be within thirty (30) days of the date of this Order;
- 19 (2) The weighing(s) of the exhibit(s) identified in this Order will be conducted first and
separately from any retesting permitted by this Order;
- 20 (3) The defense expert's weighing will be, and retesting may be, observed by a Government law
enforcement officer, who will remain with the exhibit(s) until the weighing or retesting is complete and who
reserves the right to videotape/photograph the weighing and retesting or any portion thereof;

(4) After reweighing the evidence, the defense expert shall extract no more than 1 gram or half the amount of material available, whichever is less, as a representative sample from the composite portion of the exhibit for re-testing.

(5) Immediately upon completion of the weighing and sample extraction, the defense expert will return the exhibit(s) to the accompanying Government law enforcement officer; the defense expert will retain only the representative sample for the retesting ordered herein.

(6) The defense expert shall sign and return via hand delivery to the accompanying Government law enforcement officer all accompanying forms (including Form DEA-12, "Receipt For Cash Or Other Items") indicating receipt of the sample.

(7) The defense expert is responsible for safeguarding the exhibit(s)/sample(s), preserving the chain of custody in a manner to faithfully protect its integrity;

(8) The defense expert is responsible for repackaging each internal sample/exhibit package into a heat-sealed evidentiary envelope, which heat-sealed envelope shall be placed into a separate heat-sealed envelope, which shall be secured in such a manner that tampering will be readily observable;

(9) Upon completion of any retesting, the defense expert shall return any residual substance and its original packaging to the law enforcement officer or, where applicable, to the originating DEA laboratory by secure method, not to include regular mail. The method can be secured delivery services (i.e., barcode tracking systems) offered by the United States Postal Service (such as registered mail) or by a commercial carrier:

(10) All retesting must be completed within ten (10) calendar days from the date of receipt of the sample(s)/exhibit(s). Return of any residual substance and its original packaging must occur within five (5) calendar days following completion of the retesting.

(11) Any failure to follow the aforementioned procedures will render the retesting results scientifically unreliable, as those terms are used in the Federal Rules of Evidence or its state equivalent:

1 (12) Any failure by the defense to maintain the proper chain of custody will not render DEA
2 LIMS No(s). 2020-SFL8-05919; 2020-SFL8-06476; and 2020-SFL8-06986 / Exhibit Numbers 28, 29, and 32
3 inadmissible for this reason.

4 SO ORDERED THIS 16th day of March, 2022.

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6 HON. NANCY J. KOPPE
7 UNITED STATES MAGISTRATE JUDGE

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